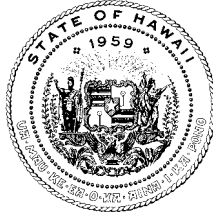


LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MINUTES  
MAUI / LANAI ISLANDS BURIAL COUNCIL**

**DATE: THURSDAY, AUGUST 25, 2005**  
**TIME: 9:00 A.M.**  
**PLACE: COUNTY OF MAUI**  
**PLANNING DEPARTMENT**  
**KALANA PAKUI BUILDING 1<sup>ST</sup> FLOOR**  
**250 S. HIGH STREET**  
**WAILUKU, HAWAII 96793**

**ATTENDANCE:**

**Members:** Charles Maxwell, Chair  
Dana Naone Hall, Vice-Chair  
Leslie Kuloloio  
Mei Lee Wong  
Scott Fisher  
Kema Kanakaole  
Keeaumoku Kapu  
Edward Kaahui  
Pualani Paoa

**Absence:** William Frampton (excused)

**Staff:** Kawika Farm, Clerk Stenographer II  
Melissa Kirkendall, Maui Archaeologist  
Vince Kanemoto, Deputy Attorney General

**Guests:** Mike Dega William Fortini Jr.  
Lisa Rotunno-Hazuka Kamanao Mills  
Glenn G. Au Richard McCarty  
Charles K. Kaupu Uilani Kapu  
Rob Parsons

**I. OPENING REMARKS**

Maui / Lanai Islands Burial Council (MLIBC) Chair, Charles Maxwell calls the meeting to order at 9:15 a.m. Maxwell acknowledges Commissioners Keeaumoku Kapu, Ed Kaahui, Mei Lee Wong, Dana Hall, Scott Fisher and himself for the purpose of fulfilling quorum. Maxwell reminds people to sign in on the attendance sheet and calls on Kapu to give the *pule wehe*. Maxwell addressed a request to move the Victor Campos case under item G of the agenda to follow item B. Maxwell said this request was made because Mike Dega the representative on this case was currently present but due to time constraints, wouldn't be able to stay for the entire meeting.

**Fisher moved and Hall seconded "only the status update on the recent inadvertent burial discovery on the Victor Campos property under item G is moved up for discussion after item B on the business section of the agenda."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Dega asked if item B on the agenda could be discussed first because Kamanao Mills a representative from the Department of Hawaiian Home Lands (DHHL) was present but had to catch an early flight back to Oahu. Hall asked Mills what time was his flight departure. Mills said his boarding time was 10:30 a.m. Hall said the council really wanted Mills to be present for item A which would be an excellent precursor for item B. Hall asked Mills if there was any way he could reschedule his flight. Mills said he was going to call Hawaiian Airlines to see if he could switch his flight. Hall said that would be good because both items were really important. Hall said it would be better if items A and B on the agenda remain as is because it would really benefit the council to have Mills present for both issues.

(Pua Paoa arrives at 9:20 a.m.)

## **II. APPROVAL OF MINUTES**

**May 26, 2005**

**June 30, 2005**

Maxwell asked if there were any corrections or additions to either minutes. Hall said she had a few revisions and told SHPD Staff Kawika Farm she would provide him with a copy of her corrections. Maxwell told everyone to speak extra loud because the microphone system was dead and there was only one external microphone to record all audio for the meeting.

Hall said "on page 6 of the May 26, minutes in the third paragraph beginning with Hazuka said, to insert the word sample in line 2 after the word representative. Hall said in the same paragraph on line 4 to delete the word prejudicial and insert the word inaudible in parenthesis. Hall said on page 7 in the fourth paragraph on line 4, to un-bold the words census MOA and replace the word census with the word consensus. Hall said the fourth paragraph of page 9 in line 3 to capitalize the W because it refers to Winslow Walker. Hall pointed out the same correction for the last line of paragraph 5. Hall said on page 12 in the fifth line of the motion to change the word documented to documentary. Hall said in line 6 in the paragraph immediately beneath the motion, to delete the word tremulous. Hall said the second line at the bottom of page 14, to delete the words horse mange and to just have the word inaudible in parenthesis. Hall said to make a similar correction on page 19

in the second to the last line of the third paragraph, to delete the boldface language Ish DPE and replace with the word inaudible.

(Leslie Kuloloio arrives at 9:25 a.m.)

Hall said on page 20 in the first line of the third paragraph to correct the spelling of Hoolenalena, it should be Poolenalena. Hall said on page 21 under item G, in the third line of the first paragraph to delete the word pine just before knoll. Hall said on page 19 of the June 30, 2005 minutes a revision was needed for a motion which was incomplete. Hall said the reason she can fill in this motion was because she as the Vice-Chair had written a letter on behalf of the council pursuant to the motion. Hall said the motion should read "Hall clarified Naeole's motion with Naeole's agreement and Minn seconded that the Vice-Chair write a letter to the state highway division recommending that any encroachments within the roadway remnant rights of way be removed and that any ground disturbing activities be monitored by a qualified archaeologist."

**Fisher moved and Wong seconded "to accept approval of the minutes as revised."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Hall asked Farm if he could create a master list of all MLIBC members and have contact information to include the names, fax and phone numbers for the purpose of contacting one another especially if a reinterment was being done in a particular geographic area. Maxwell noted the contact information would be strictly for in house use only amongst other MLIBC members.

### **III. BUSINESS**

#### **A. BURIAL TREATMENT PLAN FOR THE DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL), KULA RESIDENTIAL LOTS, UNIT 1 OF KEOKEA SUBDIVISION, KEOKEA AHUPUAA, MAKAWAO DISTRICT, MAUI ISLAND, HAWAII; TMK: 2-2-02:55**

**Determination:** Determination on a Request to Preserve in Place Ancestral Burials and Human Skeletal Remains at 12 Sites Located Within Unit 1 of the Keokea Subdivision.

**Recommendation:** Recommendation on Revised Burial Treatment Plan.

Mike Dega of Scientific Consultant Services (SCS) Archaeology identified himself and said he was representing DHHL.

(Kema Kanakaole arrives at 9:30 a.m.)

Dega introduced Kamanao Mills a representative from the DHHL and said he wanted to give two updates. Dega said at the last meeting, Kapu had asked about Cultural Impact Assessments (CIA) for the Keokea property. Dega said an Environmental Assessment (EA) was conducted in May 2001 by SSFM of Keokea and mentioned a CIA had been conducted on the Waiohuli subdivision as well in 2005 by Munekiyo & Haraga. Dega said item B on the agenda has a CIA being conducted and mentioned all three DHHL properties have undergone a CIA or was presently in progress. Dega said he spoke with

the Vice-Chair a couple days ago and as a result, another difference was the buffer zones. Dega said in the burial treatment plan (BTP) the buffer zones are to be a minimum of 3 meters, both interim and permanent, with the opportunity to expand the buffer zones as needed. Dega said this was all changed the interim will be a minimum 5 meters during all construction with the permanent preservation zone being a minimum of 3 meters with expansion as necessary.

Hall said in general the council talks about construction activities as having the most potential in disturbing historic sites. However since these lots are farm lots, Hall said its agricultural land clearing activities that poses the greatest threat in possibly disturbing sites. Hall said because each lot was at least 2 acres in size, the likelihood of disturbance resulting from actual construction of a dwelling compared to the likelihood of disturbance resulting from land clearing for farming could differ greatly. Hall said the BTP should include all activities, not just construction but also land clearing and all ground disturbing activities which may intrude in the area. Dega said he thought someone from the Association would attend today's MLIBC meeting, but doesn't see anyone as of yet.

Maxwell asked who and how will the preservation areas be protected in the future. Kamanao Mills of the DHHL identified himself and said as the plan was written, ultimately responsibility falls under DHHL. Mills said DHHL was in partnership in working with the Association to develop a process for preservation for places that has sites and sites discovered. Mills said it's a shared ownership between the lessee and the department to see that preservation measures are in place. Mills said this would be a way to empower the lessees so they know there's a burial on the property and it's their responsibility to *malama* the burial(s). Maxwell asked if the department was going to set buffer zones and preservation areas. Mills said absolutely he thinks it will be 5 meter increments and in working with the Association, some instances will be on a case by case basis. Maxwell asked Dega if the extent of archaeological sites for each parcel has been established. Dega asked if Maxwell meant the site density. Maxwell said the site density per agricultural lot. Dega said an inventory survey of the area was done in 1989 by Brown. Dega said SCS did a data recovery on 15 or 16 of those sites, but the area has not been resurveyed since 1989. Dega said the data recovery sites and burial sites were relocated. Dega said as of now the inventory survey and data recovery report were both accepted, a preservation plan was in place and was also accepted. Dega said the preservation sites could be viewed on page 3 of the BTP in yellow and mentioned what was now being dealt with were the burial sites. Dega said there was a chance for undocumented sites to surface during construction.

In response to Dega's last statement Hall said that's a critical issue which was never straightened out. Hall addressed Melissa Kirkendall and said she doesn't recall in any of SHPD's (State Historic Preservation Division) review letters, that there have been SHPD review letters for individual DHHL lots. Kirkendall said she thinks there may have been some review letters earlier on before her, but none lately. Hall asked if there was monitoring at the Waiehu Kou Phase III development. Kirkendall answered yes. Hall said there was monitoring during ground disturbance of the actual infrastructure. Kirkendall said there was no monitoring during house construction. Hall said she thinks there was monitoring during mass excavation and asked Lisa Rotunno-Hazuka if monitoring also occurred during infrastructure development. Hazuka said yes, all grubbing and grading as well installation of utilities and SIC's (Sandwich Isles Communication) fiber optic line

coming into Waiehu Kou Phase III were all monitored. Hazuka said a lot of displaced artifacts were found in the Waiehu Kou Phase III area. Hazuka said house construction was not monitored. Hall said although house construction was not monitored, she asked if mass excavation was monitored. Hazuka said yes. Hall said at least mass excavation gives an idea as to what was present because it covers the whole project area.

Hall said the situation in the upland Makawao area presents a different problem for the council. Hall said the council has recommended in the past monitoring for roadway infrastructure which results in either the identification of sites or the ability to avoid certain sites. Hall said because Keokea contains so many historic sites, not all of which have been identified to date, it leaves the council with a dilemma. Hall said she would like to discuss this a little and try to resolve this issue. Hall addressed Mills and said ordinarily in the regulatory process on Maui, DLNR (Department of Land and Natural Resources) generally will look at building permits particularly in areas where they may be or there was a likelihood of historic properties being found. Hall said if the criterion she just mentioned was used, then it would certainly apply to the Keokea land issue. Kirkendall said SHPD has recommended monitoring during infrastructure improvements which would be first. Kirkendall said additional findings are anticipated at that time and she thinks SHPD's comments on any of those findings would be a recommendation that the county forwards the construction permits to SHPD. Kirkendall said the council in consultation with SHPD could ask the County to red flag permits of this nature. Maxwell said a problem he sees was the fact that lessees don't necessarily have to build a dwelling on these 2 acre lots. Maxwell said the lessees could build a shed which could be monitored, but questioned the outcome of the remainder of the acreage because there could very well be plowing, digging and other ground disturbing activities.

Kirkendall said she thinks the bigger problem will be the reality that many of the lessees will not be able to afford archaeological monitoring. Kirkendall said it may be better to allow the council and SHPD the opportunity to comment on parcels either in proximity of existing known sites or parcels with a likelihood of having sites. Dega asked if DHHL could put in some form of terminology or language to protect the sites because they are the one awarding lots to lessees. Maxwell said there are a lot of 1 acre lots in Waiohuli that have archaeological sites, but a lot of people just don't know about the sites due to their own lack of information and understanding. Hazuka said she agrees with Kirkendall that there was no way the lessees will be able to afford archaeology. Hazuka said at the most maybe an overall monitoring plan which shows all the lots and those lots which have sites present could possibly be developed by DHHL. Hazuka said she wasn't sure if unmarked sites could be flagged off under DHHL but did acknowledge the fact that a lot of sites from the first phase of Waiohuli were being grubbed because there was no monitoring.

Fisher asked if there was any way DHHL could identify sites that may allow people to (inaudible). Hall said she was thinking something similar to Fisher in having ongoing monitoring and some type of way to let the lessee know there are specific leases with a high potential because of already identified sites. Hall said this was a potential that exists for virtually all lots within the subdivision. Hall said because of this there should be some kind of alert or plan that would allow for landowners, should he/she have a question to let them know what the statutes states about historic sites. Hall said if the landowners know that DHHL has an archaeologist on hand for response, it would be a tremendous help in addressing the council's concerns. Hall expressed her concern on how this cultural and

historic record could be destroyed without any attention being given to it and in an area where Hawaiians will take up farming activities and/or residence. Hall said if you think about the statute as calling for the rehabilitation of Hawaiians, how can our people be brought back to health when the very foundations of our culture are being destroyed. Mills said he thinks everyone was thinking along the same line and feels what was being shared should be put in language which could be shared with the lessees. Mills said he thinks it's a good suggestion to have ongoing monitoring and mentioned the possibility of having DHHL bear the cost for monitoring and to work out an agreement with the Association so that the (inaudible) is not placed solely upon the lessee.

Kuloloio felt more should be done and said today's concern should be made aware to DHHL's board of trustees because this was an issue that needs immediate attention due to the cultural and historical importance of this area. Kuloloio expressed how he wanted a letter to be drafted on behalf of the MLIBC to DHHL to address the immediate implementation of some type of policy which would encompass what is being discussed. Kuloloio said DHHL is sort of like a private entity because they're sort of like a developmental agency. Kuloloio said as a developer, before a house lot was awarded for occupancy, the responsibility of insuring the council's concerns are dealt with rest with DHHL. Kuloloio repeated his belief that DHHL should incur the cost of ongoing monitoring and strongly expressed his request to have DHHL put this into writing. Kanakaole voiced his support of what was said by Kuloloio and agreed the responsibility was on DHHL and the State. Kanakaole said he thinks it would be a good idea to put together an informational package to teach the lessees a little about archaeology, respect for historic sites and the significance of the area in general. Kanakaole felt before the lessees are allowed to move onto the lots, they should be knowledgeable about the land.

Paoa said she feels there's an attitude amongst lessees who think that they'll get a lot with no *iwi* on the parcel. Paoa said although it's only a few individuals this attitude needs to change. Paoa expressed how she believes Hawaiians lost their culture but are reviving it. Paoa said Hawaiians are learning to use protocol in the way a *kihei* is worn and behavior is conducted. Paoa said a protocol needs to be created so Hawaiians know how to handle a burial found on their lots. Maxwell said he understands where Mills was coming from because Micah had told him that DHHL was trying to get as many lots awarded before the next election for the governor. Maxwell said Keokea will not be used as a means of desecrating the culture.

Fisher reiterated Kanakaole's stance of educating the lessees about the importance of Keokea and the point of having DHHL possibly fund ongoing monitoring. Kirkendall asked when lessees apply for a building permit, if a copy of the request was sent to DHHL. Mills said yes. Kirkendall said what would really help SHPD was a comprehensive list of each lot that has a site on it as well as lots without any known sites. Kirkendall said in reference to sites, she was talking about preserve sites as well as non-preserve sites and burial sites as well as non-burial sites. Kirkendall said if DHHL could provide an overall monitoring plan that would govern all activities on DHHL property which is used by the lessees, what she would propose for the monitoring plan is an initial field inspection for lots with and without sites present. Kirkendall said in addition, she would also suggest monitoring of all lots with or without known sites during construction. Kirkendall suggested to have the field inspection done before lessees apply for building permits because once the submittal goes to the county and is received by SHPD, failure in completing the field inspection could

delay the approval process. Maxwell said along the lines of what Kirkendall mentioned, he feels DHHL should go a step further because like in Waiohuli where mass excavation was done, that's when a lot of archaeological sites are impacted.

Kapu said as he was listening to what was being said, he was trying to think of solutions to this problem. Kapu said he wonders how these lands are selected, what was the process of transferring the lands over to DHHL and the process DHHL reflects and goes through to provide the allotment to the lessees. Kapu said whenever he looks at a map, he always notice land commission awards (LCA) and royal patents. Kapu said when he sees those kinds of things like an LCA *ahupuaa*, he also sees the land tenure of the area, the royal patents which go back to the time of the Hawaiian kingdom, the *konohiki* and the people. Kapu said he always thinks about the land tenure and how Hawaiians all had an interest in a particular *ahupuaa*, from the chiefs, the government and the people. Kapu said within that mind frame of the *ahupuaa* of how everyone was responsible for taking care of each other or else the *ahupuaa* would be ruptured and the people would lose their resources, the water and the commodity amongst neighbors. Kapu said he saw a bunch of royal patents and LCAs on the map of Keokea and expressed how there has to be some kind of history that deals with this area. Kapu said if there was ways to have tenants feel that they're part of this area and they have the full responsibility of taking care of this place. Kapu said he thinks the education on the historical fact of Keokea has to apply with the tenancy rights to occupy this area. Kapu said once this is realized, the tenants will feel more responsible to *malama* the area because they'll feel connected to the land. Kapu said he thinks this issue is getting too administrative. Kapu said in some instances what happens when things become too administrative is the administration ends up only taking care of legal arbitrations and things of similar nature and sometimes the tenants are left out. Kapu suggested the history of the Keokea *ahupuaa* be tied into each lessee who is awarded a lot, to be educated before occupying the property.

Mills said looking from DHHL's perspective, the plan was to award 6,000 homes within the next 5 years. Mills said as of today 7,000 homes have been awarded. Mills said when we consider what is going on with the State of Hawaii and see that the price of homes are four hundred, five hundred, six hundred thousand dollars, it getting to a point where native Hawaiians can't afford to live on homelands. Mills said because of this, the DHHL was pushing hard to award more lots and mentioned by pushing so hard a lot of steps have been overlooked because the DHHL wants to get Hawaiians in their homes. Mills said despite DHHL's objective, it's not an excuse to overlook certain steps. Mills said he would take what was discussed about the council's concerns of Keokea back to DHHL and together with the administration, they would figure out what would be the best plan to reach a mutual consensus. Mills said the department wants to get the Hawaiians on the land as quickly as possible while taking care of their responsibility as well.

Kuloloio said he was struggling in understanding certain policies because some policies tend to change and the definition of the word benefits and lease. Kuloloio said whenever land is leased the ownership is still with the leaser not the lessee and because of this, the responsibility goes with the history of the area. Kuloloio said DHHL are the trustees for the Hawaiian people, not the developers. Kuloloio expressed how important it is to have preservation, rules and policies be mandated within the BTP because he fears some applicants who are awarded lots will want to sell. Kuloloio said this issue really needs to be cleared up with DHHL and a policy to address this selling concept needs to occur.

Wong said when DHHL purchases any lands they are required to do an EA. Wong said during the process of an EA and going through all the archaeological reconnaissance, if this was all put in a report, it would touch upon the education issue. Wong said this could be presented to the lessees during orientation meetings. Wong said DHHL does have a process of reviewing plans whether it's structural or whatever because lessees need authorization before they can go to the county to obtain their permits. Wong said she thinks there is a mechanism to notify DHHL and inform them of what the lessees are trying to do on their land. Wong said DHHL needs to be more diligent in monitoring findings. Hall asked Mills to explain the process that Wong was talking about more in depth and thanked her for bringing it up. Mills asked for clarification of Halls question. Hall said what happens when the lessee proposes a particular use of the land.

Mills said he was not the best person to answer this question and would try to summarize what he believes the process to be. Mills said the first step of the process would be to go to one of DHHL's district offices and let them know what the lessee plans to do with the land area. Mills said the next step would be to obtain a building permit. Mills said the department requires several copies of the application which the department holds one draft of and the other application is taken to the county to get the building permit. Mills said ultimately the application goes back to the DHHL before anything is finalized and addressed. Mills said the DHHL can't excuse the lessee or themselves from the health and safety requirements for all structures whether it's a shed, it still needs a building permit.

Maxwell asked if an EA was required of the Keokea farm lots and if there was any cultural assessment or cultural impact. Hall said yes. Maxwell said all this information should have been done in a cultural impact statement (CIS) which could have been given to the lessees. Maxwell said the CIS would have information about which lots have archaeological sites consisting of burials, *koas* and everything else. Maxwell asked if a CIS was done on Keokea. Dega said one was done by SSFM in 2001. Maxwell asked if all the information he talked about was included in the CIS by SSFM. Dega said he hasn't read the CIS by SSFM so he doesn't know. Maxwell said the CIS was where all the information would be included so people know a pile of rocks is actually a *koa* or maybe it's a house site and we know usually a house site has burials. Maxwell said if there wasn't this continuity then the council can't expect anything of the lessee. Dega said he thinks the archaeology was included in the EA which included the inventory survey. Dega said all the known sites were probably discussed in the EA. Maxwell said the EA is on the scientific side and doesn't address the cultural concerns. Hall interjects and said what Dega was saying is that only the sites identified during the inventory survey were discussed at that time, but it is certainly not adequate in view of additional data recovery research which was done and the experience of being out at Keokea to see the land.

Kapu said when big developments go through a preliminary approval normally CIAs and EAs are submitted which becomes a part of the whole process. Kapu said this was what he had mentioned at last month's MLIBC meeting. Kapu said besides an assessment of the sites, a developer should also be looking at the history and context of the property and needs to go as far back as pre-contact up until the present so there was an educational background to educate people who can assess the area. Kapu said from what he's hearing was the CIA and CIS were only used to complete the EA. Kapu expressed how he wanted the CIA to become part of the process to help further the lessee as well as DHHL



in understanding the area that would be occupied. Kapu said if other developments are required to a CIA then DHHL should have to do one also. Hall asked Mills if final subdivision approval has been granted by the county. Mills said no. In response to Kapu, Hall said there is a certain amount that was drawn on both the historic preservation review process and the county process in terms of the subdivision which would be virtually impossible to unwind at the current point in time. Hall said in considering the issues which have arisen in how to better protect the sites, both identified and not yet identified, that is where the council needs to focus its attention. Hall said to try and reverse this process to an earlier point in the planning and regulatory scheme will probably be met with tremendous resistance. Hall said the council is in a position to make recommendations and needs to look at the practicality of the situation. Hall said if the council considers that final subdivision approval has not been granted, council members should ask themselves what can be done now to make an assertive effort by DHHL, SHPD and the burial council in working with the lessees to address some of these issues.

Hall said another thing which makes this issue more delicate and worthy of attention was because there's very little soil in the area. Hall said the cultural layers where the burials are located are relatively close the surface and often times there are skeletal elements within 10 or 15 centimeters from the surface. Hall asked Dega how many inches is 15 centimeters to which he said was about 7 inches. Hall said these burials are in the upland area, with relatively shallow soil deposition, that is still in the process of geological erosion. Hall said because the burials are so close to the surface, any activity that is done, if a burial is present it will almost certainly be impacted. Hall said the issue about buffers for the sites needs to be at least 5 meters if not more given the nature of the site. Hall said the buffer issue sort of pales compared to two of the larger issues identified by the council. Hall said one of which is to put in place some kind of monitoring mechanism that is basically the DHHL's responsibility to undertake on behalf of the lessees that will be coming on to the lots. Hall said there needs to be some language that needs to be worked out in regards to an overall monitoring plan and the potential for ongoing monitoring which would allow for field inspections prior to submittal of permits to the county for processing. Hall said there also needs to be some provision that before a lessee can start clearing the land for agricultural or house building activities, prior to the start of land clearing is when the field inspection should occur.

Kirkendall said a question she has is (inaudible) use grubbing and grading plans as well. Hall said the problem is a lot of agricultural lands under certain acreage are exempt from grubbing and grading permits. Kirkendall wanted to know if what Hall had mentioned was applicable to DHHL lands. Kirkendall said everyone else follows the same exemption as the county where if less than an acre is being cleared no plans or permits are needed and asked Mills if this was something DHHL could initiate. Mills said he would have to discuss this with the DHHL to see if it was something that could be initiated. Kirkendall said if half an acre was being cleared, asked if DHHL would be aware this is a (inaudible). Mills said DHHL would require 2/3 of the parcel to be cultivated. Hall said this should be stated because it's applicable towards each lessee. Hall asked Mills if there was a written policy to this effect. Mills said yes it's written in the lease to help identify what are the rights and responsibilities of the lessees and to inform the lessee there might be cultural artifacts and burials on the parcel. Hall asked if the council could get a copy of the policy. Mills said DHHL is pushing to let the Association know as much information as possible about everything to do with the parcel. Mills said a lot of times lots are awarded to native

Hawaiians who don't know what their responsibilities are and how to interact with DHHL. Mills said it's a matter of making a separate push to empower the community to let them know everything. Mills said Kuloloio brought up a good point about transferring of leases which is a situation the DHHL is looking into. Mills said when a lease transfers and there are burials and or artifacts on the property, a plan needs to be initiated to also transfer the knowledge about the burials and or artifacts to the next lessee.

*Maxwell asked some of the guests in the audience to go outside if they wanted to carry on a conversation and reminded the audience to turn off or put all pagers and cell phones on vibrate due to an earlier interruption.*

Kuloloio expressed his feelings as a Hawaiian, how important this MLIBC meeting was. Kuloloio said he is starting to see this issue with a little more clarity and feels the council and the DHHL can work together in tackling some of their concerns. Kuloloio agreed with Hall that the council needs to stay within its own guidelines and its own balloon fish at the same time as understanding the greater school of balloon fishes that needs to be looked into. Kuloloio said the use of agricultural lands has been changed into residential lands because the reality of the situation is it's unlikely the lessees will be doing much farming. Kuloloio said it's unlikely because of how much historical significance Keokea has in terms of burials, artifacts and history and because how rocky the land is. Hall interjects and said not all the lands are rocky because there was evidence of agricultural terraces in the area. Hall said she understands what Kuloloio is saying about the arbitrary nature of the lots and it's of linear quality to the (inaudible).

Hall said one issue the council came up with was some kind of monitoring plan and the other is to create some type of educational packet specific to the Keokea property. Hall said the educational packet would contain historical information about the area, relevant archaeological information as is known today and a protocol for what to do when sites are encountered. Hall said the other thing really important was there will be specific notice to the lessees that have identified burial sites on their property. Hall asked Dega if some of the non-burial preservation sites were on lots as well. Dega answered yes and said on figure 2 of page 3 of the BTP they could be seen in yellow. Hall said the educational packet will have to address the burial and non-burial sites and mentioned it was important to also include a synopsis of the relevant statutes. Hall said the inclusion of the statutes which talks about knowingly harming or willfully damaging historic sites is really important because it would hopefully cause a lessee to at least think and consider the possible consequences of destroying a historic site.

Vince Kanemoto said 6E doesn't really apply to DHHL lands because it falls under NAGPRA (Native American Graves Protection and Repatriation Act). Kanemoto said contractually, DHHL would have enforceable, legal remedies to protect these sites. Kanemoto reminded the council that enforcement on a state level would not occur because jurisdiction is on a federal level. Hall said if you are applying at (inaudible) and the state process is not relevant, Kanemoto interjects and said the 6E-42 process would apply because the lessees would have to obtain a county building permit. Kanemoto said if the county believes the project may affect historic properties, then the county could seek comments from SHPD. Kanemoto said this is still separate from the 6E enforcement process. Hall said from her point of view the sites can't be in limbo where there's no ability for protection and enforcement. Hall said if the sites are not subject to state law, then they

must be subject to federal law. Hall addressed Mills and said the attorneys for DHHL will have to look into this issue to see if the statutes from 6E can be stated and if not, and DHHL agrees with Kanemoto, then the relevant federal statutes would need to be cited. Hall said the lessees must be put on notice that these are protected sites, statutorily. Hall said this is critical to protect against possible renegade lessees who will just do what they want. Kanemoto said if in fact DHHL was going to establish some type of central organization to monitor archaeological sites, the council could put the county on notice that historical properties may be affected, therefore triggering at least a review process by SHPD. Kanemoto said then SHPD could relay comments to the county and the county could attach conditions on the permits. Kanemoto said this would be the proactive way of ensuring the protection of these historic sites. For clarification Maxwell asked if what Kanemoto had said is only applicable to the county process for building and not for land clearing activities to which the answer was yes. Mills said DHHL does abide by the NAGPRA process but did mention that DHHL does want the process of what the council had mentioned involved because the lessees are native Hawaiians and this is a native Hawaiian issue. Mills said although DHHL is not required by law to undergo the extent of protection of historic sites by the council, it is the DHHL's position to take responsibility for the protection of these sites as a common courtesy for native Hawaiians.

Dega said SCS did put signs up at Waiohuli around all the *heiaus* to explain what they are and mentioned the intention to put signs up for all the non-burial sites at Keokea. Kirkendall suggested putting the federal statutes on the sign as well. Kuloloio asked if this dialog with DHHL could be continued in at a future point in time for an update of where the situation stands. Kapu requested that some type of historical assessment be added to the BTP. Maxwell said according to Dega, the CIA has already been completed. Dega agreed and also mentioned the inventory survey and data recovery has also been done. Maxwell said Kapu is talking about providing the council with access to all of these historical documents. Dega said these documents could be provided to the council and is currently in the possession of the DHHL.

Hall said this item, A is listed on the agenda for a determination and by statute there is 45 days for a determination to be made. Dega said he doesn't think this item is allowed to be a determination. Kanemoto said under the law the council doesn't have jurisdiction to make a determination because this is DHHL lands. Kanemoto said this item should have been placed on the agenda as a recommendation. Kanemoto said he believes this is a situation where the agenda could be amended to have this technicality corrected.

Kuloloio asked if anything that deals with the DHHL will always just be a recommendation to which the answer was yes. Kuloloio asked why can the council make determinations on private lands and public lands outside of DHHL. Kanemoto said as long as the property being discussed are not federal lands and are state lands under the jurisdiction of the State of Hawaii, then the council will be able to make determinations on native Hawaiian burials over 50 years old. Kuloloio said the council needs to know what DHHL is exempted from based on the county, state and federal levels to prevent future confusion. Maxwell said he could answer some of Kuloloio's questions. Maxwell said the county is following out of the request from DHHL that DHHL's lessees follow the rules of the planning code. Maxwell said on Native American reservations, county laws don't apply. Maxwell said because of an act in 1920 that is why DHHL falls under federal jurisdiction. Dega asked if SHPD is also in the same boat in the sense that SHPD can only make

recommendations of DHHL lands to which the answer was yes. Hall mentioned that most of the lands are state owned. Kanemoto said under the law, the two types of determinations the council has jurisdiction over are previously identified native Hawaiian remains over 50 years old and the recognition of lineal and cultural descendants.

Kapu asked if the decision of a lineal descendant overrides any decision by the burial council or the state. Kanemoto said no and explained that lineal descendants have a little more input into the state process than cultural descendants. Kanemoto said if it's a determination by the council to preserve or relocate remains, then ultimately it is the council's determination. Kanemoto said if a determination is being made by SHPD to preserve or relocate remains on inadvertent discoveries, then ultimately it's the determination of SHPD. Kanemoto said lineal descendants have no final authority in making a determination. Kapu asked if the state or DLNR has ultimate control. Kanemoto said yes on certain issues. Kanemoto said under the law lineal descendants simply has more input in the framework of state processes than cultural descendants. Mills (formally employed by SHPD) mentioned there have been cases where the lineal descendants wanted relocation but cultural descendants recommended preservation in place and the council ultimately decided on preservation in place.

Kuloloio asked Kanemoto if at the next meeting he could have the definitions for lineal, cultural and historical descendants. Kanemoto said the definition for lineal and cultural descendants was pretty clear. Kuloloio wanted to know how the definition of lineal and cultural descendants would connect to the history of Keokea. Kanemoto said he wouldn't know how answer Kuloloio's question on what is a historical descendant because the law doesn't define what a historical descendant is. Kuloloio said this was another balloon fish.

Kapu said he was confused because he was trying to find out what are within council's jurisdiction instead of just making recommendations. Kapu said to him it appears SHPD and the burial council is just a recommending body. Kapu said he was trying to find solutions to some of the issues the council has, but if everything the council says was going to be a recommendation, then decisions are totally up to DHHL. Maxwell said DHHL can choose to take the council's advice or not and asked Kapu if that was what he was trying to get at. Kapu said yes. Maxwell said DHHL would most likely take the council's advice and asked Mills if this was correct. Mills agreed with Maxwell and said absolutely.

Hall said she doesn't feel comfortable with the advice given by Kanemoto to amend the agenda because there is a big difference between the council's ability of having jurisdiction as a decision making body and the council's ability of just making recommendations pursuant to NAGPRA. Hall felt this issue needed to come back at next month's meeting as the proper agenda item and proceed from there. Hall addressed Mills and said the council pointed out two clear concerns that are hopefully conveyed back to DHHL. Hall said it is the council's desire that either Mills or someone else from DHHL attend next month's meeting to give the council a response on what was just discussed. Hall said another concern was if the council is looking at the wrong statutes, than the council needs to be presented with the federal line of statutes. Hall said her point was on how significant the sites at Keokea are and it is the council's responsibility to completely fulfill its *kuleana* by doing everything within their power to protect the sites at Keokea.

Hazuka asked if NAGPRA required a BTP and preservation plan to be created because currently these plans are created under a state requirement. Dega asked Hazuka if she had to prepare an MOA (memorandum of agreement). Dega said SIC would have an MOA. Hall said SIC was receiving federal monies which triggered the 106 consultation and the MOA pursuant to 106. Maxwell asked Kanemoto if the federal law is covered by NAGPRA, doesn't the federal law allude to a local body like the islands burial council (IBC). Kanemoto wasn't sure. Maxwell said if NAGPRA and the recognized islands burial councils and Hui Malama I Na Kupuna O Hawaii which are both Hawaiian organizations, if this is the case then the council does have jurisdiction. Kanemoto said NAGPRA does protect cultural items and burial sites on a federal level. Kanemoto said native Hawaiian organizations such as Hui Malama or OHA (Office of Hawaiian Affairs) could claim cultural items under NAGPRA. Kanemoto said NAGPRA does not give any jurisdiction to the islands burial council in the matter of having final authority. Kanemoto said he believes NAGPRA compliance is monitored by the Secretary of Interior of the United States and a 7 member review committee. Maxwell asked if Kanemoto was talking about the advisory committee. Mills interjects and said as he understands the situation is that there's a 30 day cooling off period when inadvertent burials are discovered. Mills said although DHHL is not under jurisdiction on a state level, it is DHHL's intent to comply as much as possible with the wishes of the burial council.

Kuloloio asked how many days the council has to come up with a decision. Hall said the clock isn't running yet because today's item is not pursuant to 6E-43. Kuloloio asked if there was any deadline to which Maxwell said no because this item would be back on next month's agenda.

**B. THE DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL), WAIHOLI RESIDENTIAL LOTS, WAIHOLI AHUPUAA, MAKAWAO DISTRICT, MAUI ISLAND, HAWAII; TMK: 2-2-02:56 POR.**

**Information / Recommendation:** Initial Discussion of Burial Sites Identified During Archaeological Inventory Survey and Data Recovery Research.

Maxwell said he had to temporarily recuse himself from the meeting due to a conflict of interest. Maxwell said he was a consultant for CKM Cultural Resources LLC who is a consultant to DHHL on this particular agenda item. Maxwell turned the meeting over to the Vice-Chair.

Hall asked the audience if there was any public testimony on either item A or B or the agenda to which none was offered.

Dega of SCS reintroduced himself and Mills of the DHHL and handed out a copy of the map of what he would be talking about.

Kuloloio asked if there was a title for the map handed out. Dega said it's the Waioli DHHL area where SCS conducted data recovery. Dega said in 1991 the area underwent an inventory survey by Michael Kolb et al for DHHL and they recorded 231 archaeological sites and 1093 features. Dega said to the right of the map was Keokea and the left is Waioli Phase I which is currently under development. Dega said during the 1991 inventory survey it was discovered, identified and reported 2 burials. Dega showed the council where the burials were located on the map, one of which was 3250 and the other

which was 3271 and said the pink area on the map was the proposed preservation. Dega said 3250 was in an enclosure and thought to be a native Hawaiian individual. Dega said 3271 was also in a small enclosure thought to be a native Hawaiian individual of historic period because a polished adze and two glass beads were found with the burial. Dega said some documentation was discovered which lead SCS to conclude the glass beads originated from China and was dated around the 19<sup>th</sup> century. Dega said SCS conducted data recovery at 8 sites in 2003. Dega said SCS remapped and did extensive excavation in the area and identified 4 burials which brought the total number of burials up to 6 within the Waiohuli project area. Dega said the burials are 3257, 3227, 3221 and 3272 which were all single individuals interred within architecture from 30 centimeters or 12 inches below the surface down to 1.5 meters or about 6 feet below the surface. Dega said these 4 burials are suspected to be interred pre-contact finds. Dega said through discussion with the DHHL it was recommended that 5 of the burials be kept in place. Dega said the burials will not be moved and buffer zones were put up around the burials. Dega said burial 3272 was a problem but clarified that the burial was not the problem, modern society was. Dega said 3272 is in the middle of proposed road F. Dega said discussion about possible relocation with DHHL has taken place. Dega said due to the engineering, water and other infrastructures, the difficulty of moving road F is not feasible and would like to know what the council can recommend. Dega said a possible relocation area could be in the proposed pink preservation area.

Kuloloio asked how many acres the project area was. Dega said about 320 acres. Kuloloio asked if the TMK for this area was 2-2-05: 56 portion. Dega said correct. Dega said in working with DHHL, SCS did something different from Keokea. Dega said SCS having the inventory survey and data recovery done went back and resurveyed every one of the proposed corridors and documented every site in the road and spent 3 months documenting each lot so that SCS now has the knowledge to relay exactly what is on each parcel. Kuloloio asked if more specifics such as what type of work could be given when the word documented is used. Dega said SCS went out to each lot, to find or identify feature on the lot and record what the possible functions were. Dega said these are all mapped and recorded, some previously by Kolb et al, some are newly identified recordings, some have been excavated and others haven't. Dega said SCS knows what is on each individual lot and the roads regardless if there's a rock mound, burial or nothing at all. Kuloloio said Waiohuli and Keokea are connected which gives a bigger picture in terms of history. Dega said road A connects Keokea to Waiohuli. Kuloloio said he was trying to visualize Keokea and Waiohuli as on big area as opposed to trying to view and determine the significance of each area separate.

Kuloloio said the proposed preservation area was located in the gullies. Dega said the preservation area does have a slight ravine, table lands, wide open space and a large garden enclosure. Kuloloio asked if the sites designated to be preserved in the proposed preservation area was more significant than sites outside of the preservation area. Dega said not necessarily and mentioned the sites in the proposed preservation area are a cross section of the whole area. Kuloloio asked if the site in the proposed preservation area was a trade off, meaning could the council pick what preservation would be for sites outside of the preservation area. Dega said the preservation area was just a proposal. Kuloloio said what if there were more sites outside of the preservation area. Dega said there were more sites outside of the preservation area and those sites are open for preservation as well. Dega said the map is simply to show the council that DHHL has set aside 65 acres for

preservation in this area. Fisher asked if the proposed preservation area was a representative of the entire area and if that was why the area was selected. Dega said the preservation area was decided in 1991 after the Kolb inventory survey, because there are significant sites that are well preserved, the area is a cross section of different landscapes and different type of sites. Dega said because of the proposed preservation area, the Waiohuli subdivision was designed around it. Kaahui asked who determined the proposed preservation area. Dega said he believes it was the first archaeologist who did the inventory in association with the DHHL. Kaahui asked what the reason for the proposed preservation area was. Dega said he think it's because the area was a good cross section. Dega said there was a *heiau*, a burial site, large agricultural enclosures and this could all be for the purpose of future researchers and future generations. Dega said the only way to get the final answer to Kaahui's question would be to go back to 1991 and asked those in charge at that time why the preservation area was where it's at. Kaahui asked why the preservation area was not designated into one big section instead of having it run from *mauka* to *makai* sort of like an *ahupuaa*. Dega said he's unsure but if he had to guess, he thought it would have something to do with the engineering and designing to the subdivision.

Kapu asked if there was a river. Dega explained where the drainage was. Fisher incurred about the burial in road F and asked if there was any possibility of preserving the burial in place. Mills said a few days ago he and Kanai Kapeliela met with the land developer to discuss the possible relocation of road F because they felt that preservation in place should always come first. Mills said when they asked if the road could be moved, the engineer ultimately said no. Mills said they went to plan B which was to relocate the burial to an adjoining parcel. Kuloloio asked if the lots have been awarded. Mills said not all the lots were awarded but about 320 were. Mills said although 320 lessees are waiting for their lots, the process of going through training, consultation and ensuring a loan that each lessee can afford still needs to occur. Mills said as lessees are approved, they will be moving into the lots while development continues.

Paoa asked what is the time frame that DHHL expects to have Waiohuli developed. Mills said Waiohuli is planned to be completed within the next 5 years starting with Phase I which has 80 lots, Phase II which has another 80 lots and finishing with Phase III which will have another 80 lots. Mills said DHHL wants to move the lessees in right away but other circumstances will determine how quickly a lessee can move in such as credit issues or if the lessee can afford it.

Hall asked how close Dega was to a write up on his research results. Dega said the data recovery should be ready in a couple weeks and mentioned the road survey and the inventory survey was already completed. Hall asked to be refreshed as to how many burials were encountered during data recovery to which Dega answered 4. Hall asked if 2 burials were the result of inventory survey to which Dega answered yes. Hall said the council needs some type of documentation of all the burials especially the burial proposed for relocation. Hall appreciated Dega's efforts of informing the council with an update of Waiohuli and asked if this item would be back on next months agenda. Dega said he would come back with a formal plan and the necessary information for this issue. Hall asked if there was anything else Mills or Dega wanted to inform the council of before moving off of this issue. Mills thanked the council for their time and *manao* and mentioned that DHHL wants to be responsible and *malama* the sites of these areas.

*Dega informed the council that he will be unable to attend next month's regularly scheduled meeting. Hall asked Mills who would come in place of Dega. Mills said he would find someone. Maxwell resumes his role of chairing the MLIBC meeting.*

Status Update on a Recent Inadvertent Burial Discovery at Victor Campos Property, Wailuku Ahupuaa, Wailuku District, Island of Maui; TMK: 3-4-039:076.

(Fortini circulated various photographs which showed the project area, a blue tarp which covered the burial and the dune where some of the grading had occurred.)

Dega of SCS introduced William Fortini Junior and said Fortini has worked with archaeology in Hawaii for over 25 years. Fortini said on July 30 an inadvertent burial was discovered at the Victor Campos property during the clearing of a sand dune. Fortini said the remains of the upper portion of an adult cranium was exposed during scraping of the dune. Fortini said Dega was contacted around 11:35 on Saturday. Fortini said the burial was approximately 70-100 centimeters below the surface of the dune located in layer two approximately 106 feet above sea level. Fortini said the cranium was found in what appeared to be a pit feature and it was determined that only a portion of the pit had been disturbed. Fortini said the contents of the burial extended into the sand dune as a result there was really no damage to the remains. Fortini said John Risedorf (the person monitoring the project) explored the portion of the dune pulled down and no other remains were found in the fill. Fortini said the remains were covered by a blue tarp and no further excavation was conducted.

Maxwell asked if the fill had been screened. Dega answered yes and said the fill around where the skull capsule was exposed had been screened. Hall said she and Kirkendall conducted a site inspection the week after the burial had been found. Hall asked Fortini if he had said the burial was not affected. Fortini said the outline of the pit was removed and the burial was viewed facing the dune looking at the top of the cranium. Fortini said since the remains extended into the dune those portions wasn't touched. Hall asked Fortini what condition the cranium was in. Fortini said he wasn't sure but from what he was told by Risedorf, the cranium was in fairly good condition. Maxwell asked if Fortini had seen the cranium himself or was he just told by Risedorf. Fortini said when he went to look at the burial on July 30, everything had already been covered so he didn't get to view the remains. Hall said she and Kirkendall saw the cranium and noticed the top of the cranium had been crushed. Hall said by crushed, she means by the action of the heavy equipment which she assumes was an excavator. Hall said when she and Kirkendall asked Risedorf what he had done to look for skeletal remains that may have been dislodged by the impact to the cranium, Risedorf responded by saying he had not screened anything. Fortini said he interviewed Risedorf on August 23 and this was the information he was given. Hall said there was a tremendous volume of sand which had been graded and cut from the dune. Hall acknowledged the burial did extend into the dune but mentioned the cranium did sustain some damage.

Hall explained one of the pictures Fortini had handed out by giving geographical locations and asked Kirkendall what she would estimate the lateral distance was from the newly inadvertent discovery to the other burial on the property which was recently reinterred. Kirkendall said she would estimate about 3.5 meters or 12 feet. Hall said the picture



showed an in situ burial as well as a reinterment site. Fortini said he has other photos and mentioned the pictures he handed out were mainly to show Kirkendall that the burial had been temporarily secured. Dega said the distance between the two burials would probably be around 30-35 feet. Hall agreed with Dega's approximation as being more accurate.

Maxwell asked Dega if archaeology was a science that takes measurements, notations where it would mention if a skull was crushed or if it was whole. Dega answered yes. Maxwell asked what had happened in this particular situation where the archaeologist representing SCS said the cranium was in good condition, when in fact Hall had mentioned the cranium had been damaged. Fortini said he got his information from Risedorf. Maxwell asked why wasn't Risedorf present. Fortini said Risedorf was out working on another project. Maxwell said Risedorf should be at the meeting because he was the person who saw the burial. Maxwell asked Dega when are archaeologists going to start taking care of the bones of the *kupunas*. Maxwell wanted to know where the consistency was. Dega said the only inconsistency was in the recordation. Maxwell said the inconsistency was not in recordation, it was in the actual viewing of the cranium. Dega said that's what he meant.

Kuloloio asked how many archaeologists were on site since the start of the most recent grading on the Campos property. Dega said since there was only one machine, there was only one person. Kuloloio asked if the type and model of the excavator was known. Dega said he could find that information. Kuloloio said an archaeological monitor should have notes in regards to what type of equipment will be on site during any excavations. Kuloloio wanted the specifics on what type of backhoes or excavators were used, especially the size of the buckets. Fortini said he didn't have any of the information Kuloloio was requesting. Kuloloio asked if there were any photographs of the process of when the teeth of a backhoe bucket goes into the dune and scrapes away sand whether it's by inches or buckets or whatever. Fortini said he didn't have the information Kuloloio requested. Kuloloio said the project area has become so congested with vehicles that the importance of the burial is given a secondary value. Dega said there aren't any vehicles on the lot. Kuloloio said there are cars on the lot. Dega said all the cars that were previously on the lot were removed prior to the start of excavating. Kuloloio said when he drove past the Campos property yesterday, he saw many, many cars on the lot. Hall said someone must have put the cars back on the lot because there are a lot of cars on the property.

Hall inquired as to the location of a photograph. Fortini said he wasn't sure. Referring to a photograph Kuloloio asked if information on the basalt rock alignment of the dune was available, to which Fortini answered no. After taking a closer look at the photograph Kuloloio was inquiring about, Fortini said the photograph was of the layer above where the burial was found. Fortini also identified the layer where the burial was found. Kuloloio said anytime an excavator is used with a big bucket that can grab, push and clear large amounts of sand, there needs to be a certain level of sensitivity especially in an area where there are suspected burials. Kuloloio said from looking at the pictures and identifying the teeth marks going down the face of the dune, it appears that excavating was done with little sensitivity. Kuloloio said the sand dune at the Campos property is mostly comprised of hard concrete like sand but did mention there was also soft sand as well. Kuloloio said what he thinks happened was during excavation the backhoe bucket was digging through the hard sand and hit a soft patch of sand that collapsed revealing the burial. Kuloloio asked at what point does the archaeologist who is monitoring the project

communicate to the heavy equipment operator to maneuver the bucket so sand is removed by inches rather than cubic yards. Maxwell asked Dega if the archaeologists are qualified to answer Kuloloio's question. Dega said in certain circumstances. Kuloloio said when there are known burials in an area he would like to see an operator who is knowledgeable about what is being done and along with the archaeologist approach excavation with a high degree of sensitivity.

Paoa said she finds some of the discussions confusing because she isn't sure where it's going. Paoa said she's thinking more about the cost to operate one of the excavators and how it's probably being rented for \$100.00 an hour. Paoa said operators are expected to do their work immediately because of cost and a time schedule. Paoa said an operator can't know for sure what are under the sand whether there are rocks or *iwi*s. Paoa said when *iwi* is found it's the council's responsibility to proceed from that point on. Paoa said if a skull is crushed it's not the operator's fault it's the equipment's fault. Paoa said this discussion is getting very emotional and suggested the operator be more sensitive about the area and the possibility of exposing burials. Dega said all the excavation was completed. Dega said SCS approached the monitoring situation assuming that every scrape of sand could contain human remains. For clarification, Maxwell addressed Paoa and said Wailuku is a hot spot for burials and this is known by the archaeologist which is why it is their responsibility in how the dune is excavated because there are burials right next to where excavation is being done. Maxwell said the point Kuloloio was alluding to was if the archaeologist was smart enough, they would have insisted on having a flat edge blade attached to the equipment to show respect for the *iwi*. Maxwell said it's the archaeologist's responsibility that the *iwi* as much as possible is not impacted by modern society. Maxwell said this is the number one priority of the burial council and protection of the *iwi* should always come first to which Paoa agreed.

Hall said there was an approved monitoring plan which Fortini acknowledged he had read. Hall asked Fortini what provisions were made for the equipment that was going to be used to grade the dune. Fortini said he wasn't sure because he was prompted. Hall said Fortini could not have read the monitoring plan because the plan called for a flat edge blade to be attached to the bucket so that the dune could be scraped in as controlled a manner as possible when using heavy equipment. Hall said what Kuloloio was pointing out was that it's apparent from the teeth marks in the dune that no flat edge blade was used and that large volume of sand was being removed with each scoop of the bucket. Hall said the council is concerned because there was an approved monitoring plan with a specific provision to use a flat edge blade so there would be greater control with respect to burials that may be encountered was not followed. Maxwell asked if Dega or Fortini read the monitoring plan. Dega said he wrote the monitoring plan. Maxwell asked why Dega doesn't insist his archaeologist follow plans. Dega said he does but maybe in this case in particular his archaeologist didn't. Dega said if the council wants to get down to the bottom of how the excavating was done, he suggested bringing in the monitor and the excavator. Maxwell said once the *iwi* is damaged it can be corrected and it is the council's position to protect the *iwi* which is why this is a very emotional discussion.

Kapu said he believes once the burial was exposed excavation had ceased but asked if excavation continued after the discovery. Dega said yes because the excavation was being done in segments and the burial was found in the last segment of excavation. Hall said she and Kirkendall had spoken with Victor Campos about possible ways of preserving

the burial. Fisher asked for clarification if the monitoring plan written required the use of a flat edge bucket but a teeth bucket was used instead. Dega said from what he understands that was correct.

Referring to a photograph Kuloloio asked how much distance was between the footing and the end of dune face where excavation had been done. Fortini said he's not an engineer and wouldn't know the answer to Kuloloio's question. Kuloloio said from where the proposed wall will be built where the rebars were, asked how many feet was between the rebar to the cut bank in the dune. Kuloloio didn't get an answer but said he posed this question because when Victor Campos and his engineer came to a previous meeting, he asked them specific questions which alluded to how much inches the council would allow the excavator to cut into the bank. Kuloloio said based on the distance between the proposed wall and the end of the cut into the dune it appears that mass excavation was done. Kuloloio said the distance he was inquiring about is over 10 feet and that was a lot of space to give up for the sensitivity of possibly finding burials. Dega said he didn't understand what 10 feet of space Kuloloio was talking about. Kuloloio explained the 10 feet he is talking about is from the cut wall to where the proposed wall will be built. Dega asked if Kuloloio is suggesting that the excavating operator cut 10 feet into the dune. Kuloloio said yes and to him it looked as if the excavation was a rushed job and that was probably why excavation was not done a little at a time.

Maxwell asked if construction was still taking place to which Dega answered no. Maxwell asked what will happen next to which Dega said the wall was going to be built. Maxwell said personally he is getting fed up with some of the things Campos has pulled over the years on his property. Maxwell said this issue just culminates everything to a point where he feels like the council should tell Campos to stop all of his activities and put back all of the excavated sand to protect the burial. Dega mentioned he is aware that Hall and Kirkendall went to the planning department to have inspectors come down and look at the Campos property. Kirkendall said the county inspectors came down to the site to make sure where the proposed wall was to be built was safe and after an inspection it was concluded that the project area was not in danger of the dune collapsing. Kirkendall said the county inspector was not at the project site to see if what was being done matched the construction plans for the project. Maxwell asked for a motion to recognize the inadequacies of the archaeological firm and the associated archaeologist in protecting the *iwi*.

Hall asked when the photographs were taken to which Fortini answered Tuesday, August 23. Hall asked if any portion of the wall was built to its proposed height. Fortini said not that he is aware of. Hall was inquiring about a wall in one of the photographs circulated by Fortini. Fortini explained the wall in the picture was already there on the Campos property. Hall said given the current situation at the Campos property, the best thing that could be done was to complete the construction of the wall.

Wong reiterated what was mentioned by Kuloloio and also agreed that she would like verification on the distance between the footings of the retaining wall to the edge of the cut wall of the dune. Wong wanted clarification on if in fact there is space between where the proposed wall would be built and the edge of the dune asked what will happen to all that space. Dega said according to the county, if there was a gap, there will always be the chance gravity could pull and cause the dune to collapse into the retaining wall. Dega

said because of this it's most likely the space will be backfilled. The council wanted to know how high the backfill was going to be. Kirkendall said based on the construction plans she would guess the backfill would go to just above the rebars. Kuloloio said the construction plans and the design plans and from what the company sees to what the archaeologist did all doesn't match up. Kuloloio asked to see the true design of the wall plans again because currently there was way too much confusion.

Hall said obviously the council would like to do everything possible to preserve the burial in place which was discovered. Hall said it was always her understanding that once the wall was constructed it was to be backfilled and mentioned over time of course the dune would collapse. Hall said the strategy of constructing the wall across the face of the dune needs to continue and what needs to be figured out was what will the strategy be when the wall reaches where the burial is. Hall expressed how the wall needed to be constructed in a way that was not going to affect the integrity of the burial to be preserved in place. Kuloloio asked about the collapsed sand towards the mauka side of the Campos property because the sand had collapsed on to where the footing for the proposed wall was to be constructed. Hall said some of the sand Kuloloio was talking about was sand that had been excavated. Hall further mentioned that the sand Kuloloio was speaking about was not all collapsed sand because when she and Kirkendall inspected the site, they asked that some of the excavated sand be placed against the dune face to help stabilize the area. Hall reiterated her concern about when the wall is constructed, it must be in a way that was not going to dislodge anymore of the burial. Hall was also concerned about how much sand immediately in front of the burial would be removed because it may cause more sand to collapse. Hall said the portion of the wall in front of the burial may have to be constructed more towards the street. Maxwell suggested having the engineers come at the next IBC meeting to work out a design on the portion of the wall Hall was referring to. Dega said it was too late to redesign the wall. Hall suggested having one or two burial council members present during construction of the wall and act as consultants when the section in front of the burial was built.

**Hall moved and Kanakaole seconded "that the burial council recommends that two members of the council, either the Chair, Vice-Chair or Council Member Kuloloio work with the project engineers, landowner and archaeologist along with Melissa Kirkendall to ensure that the construction of the wall as it fronts the inadvertent burial discovery encountered on July 30, 2005 not affect the inadvertent burial."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

- C. HUMAN SKELETAL REMAINS IDENTIFIED ON THE STEVENS PROPERTY, MAKENA, MAKAWAO DISTRICT, ISLAND OF MAUI; TMK: (2) 2-1-006:104**  
**Information / Recommendation:** Discussion of Draft Burial Treatment Plan and Reinterment Location for Human Skeletal Remains.

Lisa Rotunno-Hazuka of Archaeological Services Hawaii (ASH) identified herself and said at the last meeting she presented the long-term measures for the human skeletal remains that was identified during inventory level testing. Hazuka said the skeletal remains were previously disturbed and about half a bag of remains were collected belonging to a child and adult. Hazuka said at the last meeting the council felt the location of the proposed burial platform needed to be moved so it was more centered in the preservation area.

Hazuka said she spoke with the landowner who approved of the change and thus the reinterment pit was relocated towards the center of the preservation area where the platform is to be built. Hazuka said there would be a 10 feet buffer on the south and east sides of the preservation area and an 8 feet buffer on the north and west sides of the preservation area.

Kaahui asked how high the platform would be. Hazuka said platforms were usually 2 feet high or 2-3 courses depending on the size of the rocks. Hazuka said the buffer area around the platform is usually planted with native vegetation and the edge of the buffer area would have a 2 feet rock wall demarcating the burial. Kaahui asked if the archaeologist uses existing stones in the area or were the stones brought in. Hazuka said the archaeologist tries to use what's native to the area.

Hall inquired about written documentation to which Hazuka said she would have the plan the next time this item is on the agenda for determination.

**D. HAWAIIAN CEMENT SAND MINING OPERATION, WAILUKU DISTRICT, MAUI; TMK: 3-8-07: portion of 101**

**Information / Recommendation:** Discussion of Inadvertent Burial Discoveries; Mitigation for Previous Inadvertent Burial Discoveries; Status Update on State and County Special Use Permit Application for Hawaiian Cement Extraction of Sand and County Grading Permit.

Hazuka of ASH representing Hawaiian Cement identified herself and said sand was being mined on Alexander & Baldwin (A&B) property. Hazuka apologized for not bringing her map to give the council a better idea of the where the area of discussion was. Hazuka drew an illustration representative of the area of discussion and identified where Kuihelani Highway and Waiko Road were. Hazuka said the project area is around 60 acres within a 400 acre lot that A&B owns. Hazuka said ASH has been monitoring Hawaiian Cement since 2002. Hazuka said mining operations began in an area called locale 1 and as mining occurred, burials were found. Hazuka said when burials were found, mining would stop so the burial could be documented and any displaced remains could be collected. Hazuka said the burial was then covered for protection and a fence was placed around the burial giving it a 50 foot buffer area. Hazuka said once this was completed, mining was allowed to resume outside of the 50 foot buffer area. Hazuka said over years 54 burials were identified. Hazuka said the council was always concerned about the frequency of burials being disturbed and as a result finally told Hawaiian Cement and A&B that in certain localities, no mining could occur. Hazuka said when Hawaiian Cement applied and was up to receive a new grading permit, the council was very concerned. Hazuka said at an earlier meeting, it was agreed to allow mining to continue outside of a concentrated area of burials. Hazuka said since that time, mining has been going on for about four months and mentioned one burial was found in a previously mined area. Hazuka said Hawaiian Cement is starting to move towards Kuihelani Highway and mentioned she recently learned Ameron was going to move into the area.

Hall interjects and said mining needs to stop because the area was agricultural lands where a conditional use permit and a special use permit are required. Hall said she didn't think the county should allow another sand mining operation without having the existing operations properly permitted. Hall asked how imminent was the Ameron situation to

which Hazuka answered very imminent. Maxwell said one more burial was cumulatively one too many. Maxwell asked for an account of how many burials were associated with this issue. Hazuka said there were 54 confirmed burials and 9 probable burials. Maxwell pointed out there was over 60 burials and mining in the area needed to stop. Kuloloio added that if the council allows anymore sand mining in the area, that it would really defeat the council's mission of protecting the *iwis*. Kuloloio felt it was time to start finishing mining operations. Hall said A&B can't just decide after only after 3 meetings they want to change 836 acres of agricultural lands into urban uses. Hall confirmed A&B was making a move to decide how they want to develop the 836 acres which includes the 60 acres leased to Hawaiian Cement. Hall asked if the lease A&B was giving to Ameron was in the same licensed area as Hawaiian Cement. Hazuka said she believes the lease was granted for an area outside of Hawaiian Cement's 60 acres but it would still be very close to the concentration of burials identified by ASH. Hall said A&B/Hawaiian Cement are delinquent in coming up with plans to protect the burials already identified which has been going on for more than two years and after the council had put them on alert.

Rob Parsons of the mayor's office identified himself and said the Hawaiian Cement grading permit was renewed in April of 2005 for another year which would end in April 2006. Parsons said he is unsure as to the status of Ameron's grading permit and mentioned that grading permits last for only one year and must be renewed annually. Parsons said he believes it was in May 2003 when the council first asked him to assist in getting a determination from Planning Director, Michael Foley as to whether or not sand mining on agricultural lands by Hawaiian Cement was permitted use under county code. Parsons said he was informed by Foley that Hawaiian Cement's sand mining operation was not a permitted use and therefore was to obtain a conditional use permit as well as a special use permit. Parsons said he thinks an application was submitted to the county at the end of July 2003 and mentioned he felt the application was incomplete and needed to be revised before acceptance. Parsons felt because this issue was still being discussed two years later, suggested the council urge the administration to see what could be done in addressing the situation.

Maxwell reiterated the fact of 61 burials being identified. Hall informed Parsons A&B was going to grant Ameron a license for sand mining in the same 400 acre parcel as Hawaiian Cement. Hazuka said she didn't know for certain if Ameron was granted use of land outside of the 60 acres used by Hawaiian Cement, but mentioned it would make the most sense if Ameron was. Hall said it would be incredibly irresponsible to add another sand mining operation in the area when the existing sand mining operation is operating without the necessary permits. Hall said it's time to get those involved to follow the regulatory process because it affords the necessity for the development of a preservation plan for the burials already encountered. Hall said the council was going to push the issue and if the issue needed to be publicized, felt the council should publicize it.

**Hall moved and Kaahui seconded "that the Vice-Chair write a letter on behalf of the council to Mayor Alan Arakawa and the Director of the Planning Department Michael Foley and copies of the letter be sent to Alexander & Baldwin, Hawaiian Cement and the Department of Public Works informing the administration that the Maui/Lanai Islands Burial Council objects to the issuance of any further grading and grubbing permits for sand mining within the 400 acre parcel; TMK: 3-8-7: portion of 101 and the council requests that the County require Hawaiian Cement to immediately begin**

the processes of obtaining a Conditional Use Permit and a State and County Special Use Permit for the existing sand mining operations. The council further strongly requests that Alexander & Baldwin and or Hawaiian Cement immediately develop a preservation plan for all of the inadvertent burials discovered to date and to present this plan to the State Historic Preservation Division and the Maui/Lanai Islands Burial Council within 60 days of the date of the letter.”

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

**E. HUMAN SKELETAL REMAINS TAKEN FROM KAA NAPALI BURIAL SITE.**

**Information / Recommendation:** Discussion of Federal Investigation of Illegal Sale of the Cranium of an Ancestral Native Hawaiian; Return of the Cranium to Maui for Reinterment.

Maxwell gave some background information on item and said last year in 2004, members of Hui Malama I Na Kupuna saw that a native Hawaiian skull was being sold on ebay and was being advertised as a native Hawaiian warrior. Maxwell said he found out the skull was not of a warrior because it was determined the skull was of a woman. Maxwell said Eddie Ayau of Hui Malama I Na Kupuna wrote to the person (Jerry David Hasson) selling the skull and ebay telling them that the sale of the skull was illegal. Maxwell said ebay removed the skull from its website. Maxwell said Ayau filed a complaint with a federal bureau who assigned an agent (John Fryar of the Bureau of Indian Affairs) to investigate, go undercover and contact Hasson to arrange the purchase of the skull. Maxwell said when agent Fryar approached Hasson on purchasing the skull Hasson said he would give the skull to the Fryar if he bought some comic books for \$2500.00. Maxwell said Fryar bought the comic books and obtained possession of the skull. Hall explained that the purchasing of the comic books was a front to actually purchase the skull because the agent Fryar paid way over the value of the comic books’ actual value. Maxwell said after agent Fryar got the skull he located Hasson and arrested him. Maxwell explained that Hasson had to go to court, was found guilty and sentenced to 13 months of probation with additional terms and conditions. Maxwell mentioned the case was now in the hands of SHPD and said the Administrator Melanie Chinen wrote a response letter back (to William Carter, the Assistant United States Attorney of the Environmental Crimes Section) to work out the transfer of the skull from agent Fryar to SHPD. Maxwell said Ayau went up to New Mexico for an unrelated reason but ended up with the chance to wrap the remains which he did. Maxwell said in a month’s time Ayau would accompany Fryar on the trip to Maui to transfer the skull to the MLIBC. Maxwell said he has been in contact with the owners of the Whalers Village to locate a possible burial site and was told to speak with Charles Kaupu who was their cultural consultant.

Kaupu wanted more information on the process of how this situation was to transpire because at the moment all he knows for certain was a reinterment site needed to be chosen. Kaupu said there was a little hesitation by the owner because they were in the process of selling the Whalers Village property and didn’t want the case to be publicized. Kaupu said the owners are afraid that any publicity of this case may cost them to lose money in the sale of the property. Kaupu said from his position, he doesn’t care whether this case is publicized or not, he just feels this issue needs to be taken care of. Kaupu asked the council for advice on what was to be done and said he is aware that this would come to a forefront in about a month’s time. Maxwell clarified that although the skull would

be on Maui in a month's time, possession of the skull could be held in curation at SHPD's office giving more time to work the site issue out. Maxwell said he can do without the publicity, but mentioned whoever buys the property would need to be encumbered in the deed to insure the preservation of the site in perpetuity.

Hall asked Maxwell how it was known where the *iwi* originated. Maxwell said 57 years ago the skull was taken during the filming of the show *The Hawaiians* and when Whalers Village was being built. Maxwell said he was a police officer at the time and was also working as security at the Sheraton Hotel which was the only hotel in the area at that time. Maxwell said he remembers the son of Carlton Heston and Jerry Hasson who were both staying at the Sheraton back then went down to where the remains were in a fenced off area and removed the skull from a fully articulated individual. Maxwell said when an investigator contacted Carlton Heston's son, the son of Carlton Heston claimed he did not know who Jerry Hasson was. Maxwell said the skull was from the beach area of the Whalers Village property. Hall asked Maxwell if he knew about this issue way back then. Maxwell said he didn't know anything about what happened back then or else he would have brought the issue to someone's attention. Hall asked Maxwell how was it that he knew a skull had been taken from an articulated skeleton. Maxwell said the information he conveyed was from testimony by Jerry Hasson.

Hall said the federal agent John Fryar was apparently the only agent in the U.S. that does this type of work. Hall commented on how *eleu* Hui Malama was in taking care of this issue. Hall said Fryar was anticipated to arrive in Hawaii sometime in September. Hall said the council was requesting an area to reinter the skull, where the surface would have a burial platform likely measuring 4 feet long by 4 feet wide and 2-4 feet high. Hall said the council would prefer the use of water worn stones to construct the platform and the use of mortar on the interior of the platform so there would be a dry, stacked appearance. Hall said there should also be at least a 10-12 feet buffer area around all sides of the platform. Kaupu said he thinks he knows of an excellent place for the reinterment which would be in the grassy area directly in front of Rusty's. Maxwell said there would also be a state site number. Hall said the cost of construction for the platform would be incurred by the defendant, Jerry Hasson. Hall said there should be a bronze plaque on the top of the platform which should read burial site followed by the state site number and have the word *kapu* on it. Kaupu suggested planting ti leaves around the entire platform as a means of keeping wandering people from disturbing the site.

Fisher asked if there was any possibility of uniting the skull with the rest of its remains to which the answer was no. Hall wanted confirmation from Kirkendall if a preservation plan was needed. Kirkendall said it would be wise to have a preservation plan and have the burial be identified as an inadvertent discovery. Kirkendall said it would also be wise to have a preservation plan so that it may be encumbered with the deeds of the Whaler's Village property especially since the property was about to be sold. Hall read the sentence imposed upon Jerry Hasson which was as follows: 1) 13 months of probation, 2) 13 months of home detention, 3) \$15,000 in criminal fines, 4) restitution in the amount of \$9,945.30 to the United States Department of Interior, Bureau of Indian Affairs (BIA) for the costs incurred in purchasing, shipping and examining the remains and to the victims of the offense, including Hui Malama I Na Kupuna O Hawaii Nei, for the cost to be incurred in repatriating the remains in Hawaii. Maxwell interjects and said Hui Malama waived this right and afforded this right to SHPD. Maxwell said SHPD has agreed to use to use the



funds only for repatriation and travel expenses. Kirkendall asked about the cost of hiring an archaeological firm to write the preservation plan. Hall said that was an issue which needs to be looked into. Hall said besides finding a final resting place for the skull, the council also needs to be made aware of how much money was available, whether or not the money could be used to hire an archaeologist to do a preservation plan and once the preservation plan is accepted, the cost of reinterment and construction of the platform. Maxwell volunteered to find out how much money was available for this issue.

The council expressed that they would honor the owners of Whalers Village request to keep this issue from being publicized. Kaupu said he would speak with the owners of Whalers Village and explain what was discussed at the meeting and have them comply with the council's recommendations and hopefully the cooperative actions of the owners would help to set an example for other businesses to follow. Hall said there may be a lack of money to cover all the cost related to this issue which could result in funds needing to be incurred by the owners of Whalers Village. Kaupu said it was part of the owners of Whalers Village *kuleana* anyway. Maxwell mentioned Jerry Hasson had passed away about a year and a half ago. Kuloloio suggested Kaupu work closely with the Chair and Vice-Chair to avoid confusion and have this matter expedited as quickly as possible.

**F. ESTABLISHING A COUNCIL POLICY REGARDING THE REASONABLE ADMINISTRATION OF ORAL TESTIMONY, INCLUDING TIME LIMITS ON ORAL TESTIMONY.**

Hall asked Kanemoto if the policy established was a council by council issue to which he answered yes. Kanemoto said once the council decides on a policy it will always be only be applicable to the MLIBC. Fisher asked how long was usually given for oral testimony. Maxwell said the council usually handles the situation on a case by case basis depending on how much people were in the audience. Kuloloio felt it wasn't necessary to have time limits on oral testimony. Kanemoto explained that without this policy, the council wouldn't have the right to limit a person's oral testimony. Kanemoto mentioned that although the council adopts a time limit as policy, the council still has the discretionary choice of holding a person to their time limit or allowing the person to exceed their time limit and reminded the council that they would not be able to limit a person's oral testimony without adopting a policy. The majority of the council was in favor of approving time limits on oral testimony.

**Kanakaole moved and Wong seconded "that the council adopt a policy for oral testimony given by the public to have an initial 3 minutes to testify and an additional 2 minutes to conclude."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

**G. CASE UPDATES / OTHER INADVERTENT DISCOVERIES**

Status Update on Implementation of Interim and Long-Term Preservation Measures in Burial Preservation Plan for Site 4142, Honolua, Lahaina District, Maui; TMK: 4-2-004:031.

Hall said she spoke with Rory Frampton who was the planning consultant for this case on August 24, 2005. Hall said the area of discussion was located on the shoreline, *makai* side of the highway at Mokuleia just before Slaughter House on the way to Honolua Bay.

Hall said there was a big, luxurious 4500 square foot house that was really hard to miss. Hall mentioned there was a family cemetery on the parcel which was associated with the Koa/Paahana family. Hall said the family who owns the property, whose last name was Brennan lives on the mainland. Hall said there was a BTP and a preservation plan for the family cemetery. Hall said although the Brennan's built their house mentioned they didn't do what they were supposed to do in regard to the burials. Hall mentioned there was some *pilikia* with the family members who were direct lineal descendants of the burials. Hall mentioned a lineal descendant went on to the Brennan property within the past couple months. Hall said at that time there happened to be a realtor and some other individuals present who challenged and aggravated the lineal descendant. Hall said no physical violence resulted but some very strong words were exchanged. Hall said the land owner never implemented the long-term preservation measures for the burials. Hall said the burials were identified as belonging to the Koa/Paahana and Brown Cemetery. Hall said an agreement was worked out for descendants to notify the landowner 48 hours in advance of when they wanted to visit the site. Hall said the notification to the landowner was not to gain permission to access the site, it was more of way to prevent unnecessary encounters between the landowners and the descendants. Hall said the council needs to get the landowners to comply with the BTP and the preservation plan because the property was on the market for \$4,000,000. Hall said the preservation plan was recorded with the Bureau of Conveyance and thus, there may be a covenant and restriction on the property.

Kanakaole asked what would happen to the landowner if they don't comply. Hall said she wasn't sure but mentioned that the landowner executed a restrictive covenant to protect the burial sites and mentioned she has a copy of the information. Kanemoto asked who the contractual agreement was between. Hall said she would bring the information to the next meeting.

Hall said when she spoke to Frampton she was informed the weeds had been removed and rocks were delivered to start construction of the burial wall. Hall expressed how important it was for the council to stay on top of this case and recognized the lineal descendants strong convictions in making sure this issue is resolved in a just and respectful manner.

#### Status Update on Kaulahau Burial Site 50-50-05-1064, Hamakuapoko, Maui.

Hazuka said her firm has been caring for the Kaulahau burial sites which was located along Hana highway near Tavares Bay. Hall explained more in detail where the area was located through use of landmarks. Hall said there were some burials dug into the red clay at the area but mentioned most of the burials were in the sand dune near the cliff face. Hall said because the burials were located in an area near the ocean, over time wind and waves crashing against the cliff face cause erosion resulting in burials being exposed. Hall said over the past 30 years more than a 110 individual were recovered from the area. Hall said some of the individuals were reinterred but the majority were not and are currently sitting in a lab belonging to ASH. Hall said about 3 years ago the county was convinced to take responsibility for the area. Hall said the county acquired the property about 10 years ago and mentioned the previous owner was A&B. Hall said the county worked a deal with A&B, where the county paid money for the property and agreed to let A&B develop a 3 lot subdivision in the area. Hall said A&B never took responsibility for the site and overtime some of the burials have actually come from an adjacent property owned by A&B.

Hall asked when the most recent burial was identified. Hazuka said around August 15, 2005 and a second burial was exposed around August 23. Hall told the council there was a problem with this issue because the county has a contract with ASH where money from the county's Parks Department budget was supposed to be used to pay for the services of monitoring and the recovery of burials at this site. Hazuka mentioned her contract with the county was up. Hall said the county has not paid ASH for all of its services. Hazuka said her attempts to collect payment from the county were usually met with the county telling her there was no money in their budget to pay her. Hall mentioned ASH was still caring for the burials at Kaulahau without any compensation. Hall said these were known sites that were actively eroding and she was concerned about the county's lack of responsibility in caring for the site. Hazuka said ASH was giving the county statistics on an annual basis reporting an average of 40 individuals being found a year.

Hall wanted to make a motion to draft a letter and asked Parsons who the letter should be addressed to. Parsons said it was his understanding that Parks had money in their budget but as it was just explained by Hazuka apparently Parks has no money. Parsons advised sending the letter to the Budget and Finance Department. Hall asked who the letter should be attention to. Parsons said Sherry Morrison. Parsons said if Hall sends him a copy of the letter, he would certainly look into the issue. Hall thanked Hazuka for firm's work in continuing to care for the sites. Hall told the council that Jenny O'claray who was employed by ASH showed her a *niho palaua* which was recovered along with the burial of a child. Hall said when it was time to wrap the iwi she would hope the members of the council would participate especially those who have never done it.

**Hall moved and Kanakaole seconded "that the Vice-Chair write a letter on behalf of the council to the Mayor, the head of the Department of Parks and Recreation, the council Chair of the Parks Committee and the Chair of Budget and Finance to request county funding for the ongoing monitoring and the recovery of burials exposed at the Kaulahau site."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Status Update on Recent Inadvertent Burial Discovery Along the Waihee Shoreline, Waihee, Maui.

(Maxwell exists at 1:15 p.m.)

Hall said a burial was exposed through erosion at the Waihee shoreline on property belonging to the Maui Coastal Land Trust (MCLT). Hall said the burial was located near the shore of Round Table about 75 yards towards the Waihee direction. Hall said the burial was about 4 feet down from the surface with the cranium exposed. Hall said Theresa Donham, an archaeologist went out to the site and inspected the exposed cranium of the burial. Hall said the burial would have to be removed and relocated. Hall asked if Maui Coastal Land Trust had enough money to pay Donham for her services. Fisher answered yes and explained there were some complications between Donham and MCLT. Hall asked Fisher to help work out whatever complications exists between Donham and MCLT to which Fisher said he would and also offered to assist Donham with her work.

#### **IV. ANNOUNCEMENTS**

Hall asked if there was an additional inventory survey conducted at a Niumalu property. Kirkendall said there has been a bit of additional inventory work on the property, but mentioned the inventory survey Hall was inquiring about was for an adjacent parcel. Hall asked what the landowner's name was. Kirkendall said the landowner's name was Stephan Lefevre. Hall asked if a burial was uncovered as a result of the additional work. Kirkendall said testing was done and she believes the find was of a burial. Hall asked Kirkendall if she could locate the relevant information about this burial and the TMK so she would remember to request this item be placed on next month's agenda. Kirkendall said the TMK was 1-7-3:16.

Hall said Erik Fredericksen and herself conducted a reinterment at the Kamehameha III Elementary School in Lahaina on Tuesday, August 23. Hall said the reinterment consisted of a few fragmented remains which were collected from a trench during the installation of a new pipeline. Hall said the remains were reinterred back into a portion of the trench where the remains were found. Hall said the remains were probably disturbed during the installation of a sewer line because there were traces of the old sewer line found in the trench where the remains were collected. Hall said the remains were reinterred before the school year officially started, as requested by school officials, and they wanted to make sure everything was fine when the students arrived for class. Hall mentioned the *iwi* was wrapped by Kuloloio.

#### **V. ADJORNMENT**

**Kapu moved and Fisher seconded "to adjourn the meeting at 1:35 p.m."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Respectfully Submitted,

Kawika Farm  
Clerk Stenographer II  
State Historic Preservation Division